

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2172 of 2002

Sambhaji Nagar Co-op Housing Soc. .. Petitioner
versus
Bombay Municipal Corporation .. Respondents

...

Mr.K.P. Pandey i/b M/s.M.P. Vashi & Associates for
the petitioner.

Mrs.A.R. Joshi for the respondent.

CORAM : D.G. KARNIK, J.

DATED : 6th July 2005.

P.C.:

1. Heard learned counsel for the parties.
2. The petitioner is a Co-operative housing Society. It purchased the property bearing plot

no.279 (CS no.92) admeasuring 4451 sq.yards (3639.69 sq.m), by a deed of conveyance dated 18th March 1986. It appears that the existing old building on the said property was demolished under a redevelopment scheme under regulation no.33(7) of the Development Control Regulations (D.C. Regulations). The new building was ready in the year 1997. Thereafter, respondent - Municipal Corporation levied the property tax on the new building in accordance with the provisions of the Bombay Municipal Corporation Act 1888. The petitioner Society and its members did not pay the taxes and therefore respondent no.1 attached the property of the petitioner by issuance of an attachment warrant dated 18th March 2002. That order of attachment is impugned in this Writ Petition.

3. Learned counsel for the petitioner submits in view section 144B of the Mumbai Municipal Corporation Act 1888 (for short 'the MMC Act') the property tax should have been levied at the reduced rate. Section 144B of the MMC Act reads as follows:-

"144-B Notwithstanding anything contained in section 140 or any other provisions of this Act, during the period of twenty years from the date of commencement of the Bombay Municipal Corporation and the

Maharashtra Regional and Town Planning (Amendment) Act, 1995, or from the date of first occupation of the premises whichever is later, the property tax in respect of any building constructed, whether before or after such commencement, under the Low Cost Housing Scheme for economically weaker sections and Low Income Group by the Maharashtra Housing and Area Development Authority, or under the Slum Rehabilitation Scheme declared under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 or under any other Housing Scheme of the Central Government, State Government or Corporation for the purpose of slum improvement, and used for residential purposes, shall be levied at such reduced rates as the State Government, may, be notification in the Official Gazette, from time to time, fix; and different reduced rates may be fixed for different period and for different classes of building."

4. In exercise of the powers conferred u/s.144B of the MMC Act, the Urban Development department and State of Maharashtra has issued a notification no. BMC/1996/6183/CR-50/97/UD-21 dated 7th November 1997 whereby the State Government has fixed reduced rate of property tax for a period of 30 years with effect from 23rd November 1995. The said notification is reproduced below:-

"NOTIFICATION

. Urban Development Department
Mantralaya, Mumbai 400 032

Dated 7th November 1997.

No. BMC 1996/6183/CFR-50/97/UD-21: In exercise of the powers conferred by section 144B of the Mumbai Municipal Corporation Act (BOM III of 1888), and of all other powers enabling it in this behalf, the Government of Maharashtra hereby fixed the following reduced rates of property taxes, during the period of twenty years with effect from the 23rd November 1995, or from the date of occupation of the premises whichever is later, to be levied in respect of any building constructed, whether before or after the 23rd November 1995, under the Low Cost Housing Scheme for economically weaker sections and Low Income Group by the Maharashtra Housing and Area Development Authority, or under the Slum Rehabilitation Scheme declared under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 (Mah XXVIII of 1971), or under any other Housing Scheme of the Central Government, State Government for the purpose of slum improvement, and used for residential purposes, namely:

- | | period | Reduced rate of property tax |
|----|--------------------------------------|--|
| 1. | From the 1st year to the | 20% of the rate of property taxes levied in the particular year. |
| 2. | From the 11th year to the 15th year. | 50% of the rate of property taxes levied in the particular year. |
| 3. | From the 15th year to the 20th year | 80% of the rate of property taxes levied in the particular year |

By order and in the name of the Governor of Maharashtra.

(D.S. Gujare)
Dy.Secretary to Government.

5. Bare reading of section 144B of the MMC Act shows that the State Government has a power to fix the rates levied for property tax in respect of three categories of building i.e. (i) Low Cost Housing Scheme for economically weaker sections and Low Income Groups by MHADA. (ii) buildings constructed under Slum Rehabilitation declared under the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act 1997 and (iii) any other house scheme of the Central Government, State Government or Corporation for the purpose of Slum Improvement and use for residential purposes.

6. In the present case, property is developed under regulation no.33(7) of the Development Control Regulations 1992. The petitioner's building is not covered by the three categories envisages under section 144B of the Act or the notification issued thereunder. Therefore, it is not entitled to the reduced rate of property tax as provided in the notification. I am fortified in this view by the

decision of the Division Bench of this Court in Akruti Co-op Housing Society Ltd. & Anr. Vs. BMC & ors. (Writ Petition no. 1894 of 2000 decided on 14th January 2002, Coram : A.P. Shah and V.K.Tahilramani, JJ).

7. In the circumstances, the contention of the petitioner that property taxes should have been levied on it on the reduced rates has to be rejected.

8. There is one more reason why the present petition has to be dismissed. An appeal is provided u/s.217 of the MMC Act against issuance of a bill. The petitioner never challenged the bill by filing of an appeal u/s.217. It was only after the attachment warrant was issued that the petitioner has filed his present Writ Petition challenging the warrant of attachment. Unless the original bill is challenged, no Writ Petition against the attachment warrant can be entertained. The bill could have been challenged by filing of an appeal u/s.217 which has not been done.

9. There is no merit in the petition which is hereby dismissed with costs.

10. Rule discharged with costs.

D.G. KARNIK, J